THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 15434 of 2007

DATE: -07-2007

Between :

N.Venkaiah

… Petitioner

And

The Joint Collector,
Nellore and another.

… Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 15434 of 2007

ORDER:

Petitioner herein is the authorized dealer of the fair price shop of Narukur village, T.P.Guduru Mandal, Nellore District. On 29-05-2007, the Civil Supplies Deputy Tahsildar, Rapur along with other staff inspected the petitioner's shop and seized the commodities available under panchanama alleging certain irregularities including variation of 246 kgs of rice and 81 liters of kerosene. Pursuant thereto, a report dated 31-05-2007 was submitted by the Inspecting Officials to the second respondent and basing on the same, the second respondent, vide order, dated 05-06-2007, suspended the authorization of the petitioner pending enquiry. Aggrieved by the same, though the petitioner filed an appeal under Clause 20(1) of the Andhra Pradesh State Public Distribution System Control Order, 2001 along with an application for stay on 19-06-2007, the first respondent failed to consider his appeal and no orders have been passed even on his application for stay. Hence, this writ petition seeking a declaration that the order of suspension pending enquiry dated 05-06-2007 and also inaction on the part of the first respondent in considering the petitioner's appeal as arbitrary and illegal.

I have heard the learned counsel for the petitioner as well as learned Government Pleader for Civil Supplies appearing for the respondents.

While submitting that all the irregularities mentioned in the panchanama dated 29-05-2007 were trivial in nature, the learned counsel for the petitioner vehemently contended that the impugned

order of the suspension on such ground is unjustified and unwarranted. It is also contended that the impugned order of suspension is politically motivated and new allegations which were not found in the panchanama were invented deliberately by the second respondent to justify the impugned action. It is contended that even the alleged variations are within permissible limits, which are bound to take place since certain temporary cardholders to whom coupons were not given were attached to the petitioner's shop.

At the outset, it is to be noted that whether the irregularities alleged against the petitioner in the impugned order dated 05-06-2007 are established or not is a matter for enquiry by the second respondent. Hence, it is neither proper nor possible for this Court to make an enquiry into disputed question of fact and record a finding on the correctness or otherwise of the said allegations.

The learned counsel for the petitioner while relying upon a decision of this Court in ***P.Hanmantha Rao v. the Chief Rationing Officer***[1]***,*** further contended that the impugned order of suspension which was passed without application of mind independently to the alleged violations of control order but solely based on the ground of initiation of proceedings under Section 6-A of the Essential Commodities Act, is bad.

There can be no dispute about the ratio laid down in the said decision, however, the impugned order dated 05-06-2007 shows that the authorization of the petitioner was suspended having regard to the specific irregularities allegedly found in the inspection conducted on 29-05-2007, but not on the mere ground that the report under 6-A of the Essential Commodities Act was filed before the Joint Collector. Hence, the action of the second respondent cannot be held to be illegal on that ground.

Accordingly, the writ petition is dismissed. However it is made clear that this Court has not expressed any opinion on merits and it is open to respondents 1 and 2 to proceed with the enquiry pending on their file. No costs.

G.ROHINI,J

Date : 31-07-2007
KLP

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G. ROHINI, J

Date: -07-2007
KLP

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[1] 1993(3) ALT 442